



February 8, 2005

SENATE BILL No. 480

DIGEST OF SB 480 (Updated February 7, 2005 11:28 am - DI 102)

Citations Affected: IC 3-6; IC 3-10; IC 3-11; IC 3-11.5; IC 3-11.7; IC 3-12; IC 5-4.

Synopsis: Election administration issues. Provides that personal service upon an individual in a state recount or contest proceeding is not required if the individual's attorney has filed an appearance with the election division and is provided with service. Makes the provision imposing the 1% requirement to determine the amount of the cash deposit needed for a recount consistent for both petitions and cross-petitions. Permits certain parties to a recount or contest to file a joint motion to dismiss before the completion of the recount or contest. Specifies that recounts and contests may be conducted and votes counted for an office only in a precinct within the election district for the office. Amends statutes relating to impoundment of records and equipment by order of the state recount commission. Provides that the state recount commission's authority, in case of fraud or misconduct, to order that none of the ballots cast in a precinct be counted applies to ballots cast by any voting method. Eliminates the requirement that the governor and the lieutenant governor take the oath of office in the presence of both houses of the general assembly. Removes certain obsolete references. Repeals a provision stating that the law relating to the administrative complaint procedure under the Help America Vote Act applies after December 31, 2003.

Effective: Upon passage; July 1, 2005.

Landske, Lawson C

January 18, 2005, read first time and referred to Committee on Elections and Civic Affairs.
February 7, 2005, reported favorably — Do Pass.

SB 480—LS 7893/DI 75+



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February 8, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 480

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-6-4.2-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The election
3 division shall do the following:

4 ~~(1) Prepare and distribute paper ballots for the election or~~
5 ~~retention of persons to federal and state offices and for public~~
6 ~~questions in compliance with this title.~~

7 ~~(2) (1)~~ Maintain complete and uniform descriptions and maps of
8 all precincts in Indiana.

9 ~~(3) (2)~~ Promptly update the information required by subdivision
10 ~~(2) (1)~~ after each precinct establishment order is filed with the
11 commission under IC 3-11-1.5.

12 ~~(4) (3)~~ Issue media watcher cards under IC 3-6-10-6.

13 ~~(5) (4)~~ Prepare and transfer to the department of state revenue
14 voter registration affidavits for inclusion in state adjusted gross
15 income tax booklets under IC 6-8.1-3-19.

16 ~~(6) After December 31, 2003, (5)~~ Serve in accordance with 42
17 U.S.C. 1973ff-1(b) as the office in Indiana responsible for

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providing information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.

~~(7)~~ (6) As required by 42 U.S.C. 1973ff-1(c), submit a report to the federal Election Assistance Commission not later than ninety (90) days after each general election setting forth the combined number of absentee ballots:

(A) transmitted to absent uniformed services voters and overseas voters for the election; and

(B) returned by absent uniformed services voters and overseas voters and cast in the election.

~~(8)~~ (7) Implement the state plan in accordance with the requirements of HAVA (42 U.S.C. 15401 through 15406) and this title, and appoint members of the committee established under 42 U.S.C. 15405.

~~(9)~~ (8) Submit reports required under 42 U.S.C. 15408 to the federal Election Assistance Commission concerning the use of federal funds under Title II, Subtitle D, Part I of HAVA.

SECTION 2. IC 3-10-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. ~~(a) This subsection applies before January 1, 2004. A person who will be a voter at the general election for which the primary is being held and whose name does not appear on the registration record or on the certified copy of the registration record in a county with a computerized registration system may vote if the circuit court clerk or board of registration provides a signed certificate of error under IC 3-7-48 showing that the person is a registered voter of the precinct.~~

~~(b) This subsection applies after December 31, 2003. A person who will be a voter at the general election for which the primary is being held and whose name does not appear on the registration record of the precinct or on the certified copy of the registration record prepared under IC 3-7-29 may:~~

(1) vote if the county voter registration office provides a signed certificate of error; or

(2) cast a provisional ballot under IC 3-11.7, as provided by 42 U.S.C. 15482.

SECTION 3. IC 3-10-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. ~~(a) This section applies after December 31, 2003.~~

~~(b)~~ (a) This section does not apply to a voter who is challenged under section 10 of this chapter on the basis of party affiliation.

~~(c)~~ (b) In accordance with 42 U.S.C. 15482, a voter challenged

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under this chapter is entitled to cast a provisional ballot under IC 3-11.7 after executing the affidavit under section 9 of this chapter.

SECTION 4. IC 3-11-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) When the hour for closing the polls occurs, the precinct election board shall permit all voters who:

- (1) have passed the challengers and who are waiting to announce their names to the poll clerks for the purpose of signing the poll list;
- (2) have signed the poll list but who have not voted; or
- (3) are in the act of voting;

to vote. In addition, the inspector shall require all voters who have not yet passed the challengers to line up in single file within the chute. The poll clerks shall record the names of the voters in the chute, and these voters may vote unless otherwise prevented according to law.

(b) This subsection applies

~~(1) after December 31, 2003; and~~

~~(2) if a court order (or other order) has been issued to extend the hours that the polls are open under section 8 of this chapter.~~

As provided in 42 U.S.C. 15482, the inspector shall identify the voters who would not otherwise be eligible to vote after the closing of the polls under subsection (a) and shall provide a provisional ballot to the ~~voter voters~~ in accordance with IC 3-11.7.

SECTION 5. IC 3-11-8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) A voter challenged under section 20 of this chapter may vote if the voter makes an affidavit in writing under section 23 of this chapter and either of the following applies:

- (1) The voter's name appears on the registration list.
- (2) The voter does one (1) of the following:
 - (A) Produces a certificate of error issued by a registration official of the county in accordance with IC 3-7-48 showing that the voter is registered in the precinct where the voter resides and offers to vote.
 - (B) Produces an affidavit executed under IC 3-10-10 or IC 3-10-11 if the voter executed an affidavit under those provisions.
 - (C) Makes an oral or a written affirmation under IC 3-10-12.

~~(b) After December 31, 2003, A voter challenged under section 20 of this chapter:~~

- ~~(1) whose name does not appear on the registration list; and~~
- ~~(2) who is not permitted to cast a vote under IC 3-7-48-1,~~

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1 IC 3-7-48-5, IC 3-7-48-7, IC 3-10-10, IC 3-10-11-2, or
 2 IC 3-10-12;
 3 is entitled to cast a provisional ballot under IC 3-11.7 if the voter
 4 makes an affidavit in writing that the voter is a legal voter of the
 5 precinct.

6 SECTION 6. IC 3-11-8-23 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. The affidavit
 8 of a challenged voter required by section 22 of this chapter must be
 9 sworn and affirmed and must contain the following:

- 10 (1) A statement that the voter is a citizen of the United States.
- 11 (2) The voter's date of birth to the best of the voter's information
 12 and belief.
- 13 (3) A statement that the voter has been a resident of the precinct
 14 for thirty (30) days immediately before this election or is qualified
 15 to vote in the precinct under IC 3-10-10, IC 3-10-11, or
 16 IC 3-10-12.
- 17 (4) The voter's name and a statement that the voter is generally
 18 known by that name.
- 19 (5) A statement that the voter has not voted and will not vote in
 20 any other precinct in this election.
- 21 (6) The voter's occupation.
- 22 (7) The voter's current residential address, including the street or
 23 number and if applicable, the voter's residential address thirty
 24 (30) days before the election, and the date the voter moved.
- 25 (8) A statement that the voter understands that making a false
 26 statement on the affidavit is punishable under the penalties of
 27 perjury.
- 28 (9) ~~After December 31, 2003,~~ If the individual's name does not
 29 appear on the registration list and the individual is not entitled to
 30 vote under IC 3-7-48-1, IC 3-7-48-5, IC 3-7-48-7, IC 3-10-10,
 31 IC 3-10-11-2, or IC 3-10-12, a statement that the individual
 32 registered to vote and where the individual believes the individual
 33 registered to vote during the registration period described by:
 34 (A) IC 3-7-13-10; or
 35 (B) IC 3-7-36-11, if the voter registered under that section.

36 SECTION 7. IC 3-11-8-23.5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23.5. ~~(a) This~~
 38 ~~section applies after December 31, 2003.~~

39 ~~(b)~~ In accordance with 42 U.S.C. 15482, a voter challenged under
 40 section 21 of this chapter is entitled to cast a provisional ballot under
 41 IC 3-11.7 after executing the affidavit under section 23 of this chapter.

42 SECTION 8. IC 3-11-8-25 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) After a voter has passed the challengers or has been sworn in, the voter shall be admitted to the polls. Upon entering the polls, the voter shall announce the voter's name to the poll clerks or assistant poll clerks. A poll clerk, an assistant poll clerk, or a member of the precinct election board shall require the voter to write the following on the poll list:

(1) The voter's name.

(2) The voter's current residence address.

(b) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall:

(1) ask the voter to provide the voter's voter identification number;

(2) tell the voter the number the voter may use as a voter identification number; and

(3) explain to the voter that the voter is not required to provide a voter identification number at the polls.

(c) ~~This subsection applies after December 31, 2003.~~ The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 or IC 3-11-3-18 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present a piece of identification described in subsection (d) to the poll clerk.

(d) ~~This subsection applies after December 31, 2003.~~ As required by 42 U.S.C. 15483, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

(1) a current and valid photo identification; or

(2) a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(e) ~~This subsection applies after December 31, 2003.~~ If a voter presents a document under subsection (d), the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(f) ~~This subsection applies after December 31, 2003.~~ If a voter required to present documentation under subsection (d) is unable to

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1 present the documentation to the poll clerk while present in the polls,
 2 the poll clerk shall notify the precinct election board. The board shall
 3 provide a provisional ballot to the voter under IC 3-11.7-2.

4 (g) ~~This subsection applies after December 31, 2003.~~ The precinct
 5 election board shall advise the voter that the voter may file a copy of
 6 the documentation with the county voter registration office to permit
 7 the provisional ballot to be counted under IC 3-11.7.

8 (h) This subsection does not apply to a precinct in a county with a
 9 computerized registration system whose inspector was:

10 (1) furnished with a list certified under IC 3-7-29; and

11 (2) not furnished with a certified photocopy of the signature on
 12 the affidavit of registration of each voter of the precinct for the
 13 comparison of signatures under this section.

14 In case of doubt concerning a voter's identity, the precinct election
 15 board shall compare the voter's signature with the signature on the
 16 affidavit of registration or any certified copy of the signature provided
 17 under IC 3-7-29. If the board determines that the voter's signature is
 18 authentic, the voter may then vote. If either poll clerk doubts the voter's
 19 identity following comparison of the signatures the poll clerk shall
 20 challenge the voter in the manner prescribed by section 21 of this
 21 chapter.

22 (i) If, in a precinct governed by subsection (h):

23 (1) the poll clerk does not execute a challenger's affidavit; or

24 (2) the voter executes a challenged voter's affidavit under section
 25 22 of this chapter or had executed the affidavit before signing the
 26 poll list;

27 the voter may then vote.

28 (j) This section expires January 1, 2006.

29 SECTION 9. IC 3-11-8-27.5 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27.5. ~~(a) This~~
 31 ~~section applies after December 31, 2003.~~

32 ~~(b)~~ In accordance with 42 U.S.C. 15482, a voter challenged under
 33 section 27 of this chapter is entitled to cast a provisional ballot under
 34 IC 3-11.7 after executing the affidavit under section 23 of this chapter.

35 SECTION 10. IC 3-11-10-4.5 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. ~~(a) This~~
 37 ~~section applies after December 31, 2003.~~

38 ~~(b)~~ (a) Upon receipt of an absentee ballot from a voter required to
 39 provide additional information to the county voter registration office
 40 under IC 3-7-33-4.5, the county election board shall contact the county
 41 voter registration office to determine if the additional information has
 42 been filed with the office by the voter.

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1 ~~(c)~~ **(b)** If the voter has filed the information with the county voter
 2 registration office, the county election board shall add a notation to the
 3 application indicating that the required information has been filed and
 4 that the absentee ballot may be counted if the ballot otherwise complies
 5 with this article.

6 ~~(d)~~ **(c)** If the voter has not filed the information with the county
 7 voter registration office, the county election board shall add a notation
 8 on the application filed by a voter described under ~~subsection (c)~~
 9 **subsection (b)** and on the envelope provided under this chapter reading
 10 substantially as follows:

11 "INSPECTOR: AS OF (insert date absentee ballot application
 12 approved) THIS VOTER WAS REQUIRED TO FILE
 13 ADDITIONAL DOCUMENTATION WITH THE COUNTY
 14 VOTER REGISTRATION OFFICE BEFORE THIS BALLOT
 15 MAY BE COUNTED. CHECK THE POLL LIST AND
 16 COUNTY ELECTION BOARD CERTIFICATION TO SEE IF
 17 THE VOTER HAS FILED THIS INFORMATION. IF NOT,
 18 PROCESS AS A PROVISIONAL BALLOT IF THIS BALLOT
 19 OTHERWISE COMPLIES WITH INDIANA LAW."

20 SECTION 11. IC 3-11-10-11 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) On election
 22 day each circuit court clerk (or an agent of the clerk) shall visit the
 23 appropriate post office to accept delivery of absentee envelopes at the
 24 latest possible time that will permit delivery of the ballots to the
 25 appropriate precinct election boards before 6 p.m.

26 (b) ~~This subsection applies after December 31, 2003.~~ Not later than
 27 noon on election day, the county voter registration office shall visit the
 28 appropriate post office to accept delivery of mail containing
 29 documentation submitted by a voter to comply with IC 3-7-33-4.5. The
 30 office shall immediately notify the county election board regarding the
 31 filing of this documentation to permit the board to provide certification
 32 of this filing to the appropriate precinct election boards before 6 p.m.

33 SECTION 12. IC 3-11-10-12 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Each county
 35 election board shall have all absentee ballots delivered to the precinct
 36 election boards at their respective polls on election day.

37 (b) The absentee ballots shall be delivered during the hours that the
 38 polls are open and in sufficient time to enable the precinct election
 39 boards to vote the ballots during the time the polls are open.

40 (c) ~~This subsection applies after December 31, 2003.~~ Along with the
 41 absentee ballots delivered to the precinct election boards under
 42 subsection (a), each county election board shall provide a list certified

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by the circuit court clerk. This list must state the name of each voter subject to IC 3-7-33-4.5 who:

- (1) filed the documentation required by IC 3-7-33-4.5 with the county voter registration office after the printing of the certified list under IC 3-7-29 or the poll list under IC 3-11-3-18; and
- (2) as a result, is entitled to have the voter's absentee ballot counted if the ballot otherwise complies with this title.

(d) ~~This subsection applies after December 31, 2003.~~ If the county election board is notified not later than 3 p.m. on election day by the county voter registration office that a voter subject to IC 3-7-33-4.5 and not identified in the list certified under subsection (c) has filed documentation with the office that complies with IC 3-7-33-4.5, the county election board shall transmit a supplemental certified list to the appropriate precinct election board. If the board determines that the supplemental list may not be received before the closing of the polls, the board shall:

- (1) attempt to contact the precinct election board to inform the board regarding the content of the supplemental list; and
- (2) file a copy of the supplemental list for that precinct as part of the permanent records of the board.

(e) This subsection applies to a special write-in absentee ballot described in:

- (1) 42 U.S.C. 1973ff for federal offices; and
- (2) IC 3-11-4-12(d) for state offices.

If the county election board receives both a special write-in absentee ballot and the regular absentee ballot described by IC 3-11-4-12 from the same voter, the county election board shall reject the special write-in ballot and deliver only the regular absentee ballot to the precinct election board.

SECTION 13. IC 3-11-10-16.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.5. ~~(a) This section applies after December 31, 2003.~~

~~(b)~~ If the inspector finds under section 16(a) of this chapter that the voter has not filed the additional information required to be filed with the county voter registration office under IC 3-7-33-4.5, but that all of the other findings listed under section 16(a) of this chapter apply, the inspector shall direct that the absentee ballot be processed as a provisional ballot under IC 3-11.7.

SECTION 14. IC 3-11-10-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) A voter voting before an absentee voter board shall mark the voter's ballot in the presence of the board, but not in such a manner that either of the

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members of the board can see for whom the voter voted, unless the voter requests the help of the board in marking a ballot under IC 3-11-9.

(b) The voter shall then, in the presence of the board, place the ballot in an envelope furnished by the county election board.

(c) The circuit court clerk shall provide, to the extent practicable, the same degree of privacy to absentee voters voting at the office of the circuit court clerk as provided to voters at the polls on election day.

(d) This subsection applies to a voter required to present additional information under IC 3-7-33-4.5. If the voter does not present the required additional information before receiving the absentee ballot, the absentee ballot shall be processed in accordance with ~~section 4.5(d)~~ **section 4.5(c)** of this chapter.

(e) Upon accepting the completed absentee ballot from the voter, the board shall provide the voter with a notice:

- (1) listing the documentation the voter may submit to the county voter registration office to comply with IC 3-7-33-4.5; and
- (2) stating the address and hours of the county voter registration office.

SECTION 15. IC 3-11-10-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. (a) ~~After December 31, 2003,~~ This section does not apply to an absentee ballot required to be treated as a provisional ballot under IC 3-11.7.

(b) If an envelope containing an absentee ballot has not been opened before the close of the polls, then the envelope may not be opened without an order of a court.

SECTION 16. IC 3-11.5-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the absentee ballot counters find under section 11 of this chapter that:

- (1) the affidavit is properly executed;
- (2) the signatures correspond;
- (3) the absentee voter is a qualified voter of the precinct;
- (4) the absentee voter is registered and ~~after December 31, 2003,~~ is not required to file additional information with the county voter registration office under IC 3-7-33-4.5;
- (5) the absentee voter has not voted in person at the election; and
- (6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications and the political party with which the absentee voter intends to affiliate;

the absentee ballot counters shall open the envelope containing the absentee ballots so as not to deface or destroy the affidavit and take out

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each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined.

(b) ~~This subsection applies after December 31, 2003.~~ If the absentee ballot counters find under subsection (a) that the voter has not filed the additional information required to be filed with the county voter registration office under IC 3-7-33-4.5, but that all of the other findings listed under subsection (a) apply, the absentee ballot shall be processed as a provisional ballot under IC 3-11.7.

(c) The absentee ballot counters shall then deposit the ballots in a secure envelope with the name of the precinct set forth on the outside of the envelope. After the absentee ballot counters or the county election board has made the findings described in subsection (a) or section 13 of this chapter for all absentee ballots of the precinct, the absentee ballot counters shall remove all the ballots deposited in the envelope under this section for counting under IC 3-11.5-5 or IC 3-11.5-6.

SECTION 17. IC 3-11.7-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As provided by 42 U.S.C. 15482, this section applies to the following individuals:

(1) An individual:

- (A) whose name does not appear on the registration list; and
- (B) who is not permitted to vote under IC 3-7-48-1, IC 3-7-48-5, IC 3-7-48-7, IC 3-10-10, IC 3-10-11-2, or IC 3-10-12.

(2) An individual described by IC 3-10-1-10.5, IC 3-11-8-23.5, or IC 3-11-8-27.5 who is challenged as not eligible to vote.

(3) An individual who seeks to vote in an election as a result of a court order (or any other order) extending the time established for closing the polls under IC 3-11-8-8.

(b) ~~This subsection applies after December 31, 2003.~~ As required by 42 U.S.C. 15483, a voter who has registered to vote but has not:

- (1) presented identification required under 42 U.S.C. 15483 to the poll clerk before voting in person under IC 3-11-8-25; or
- (2) filed a copy of the identification required under 42 U.S.C. 15483 to the county voter registration office before the voter's absentee ballot is cast;

is entitled to vote a provisional ballot under this article.

(c) A precinct election officer shall inform an individual described by subsection (a)(1) or (a)(2) that the individual may cast a provisional ballot if the individual:

- (1) is eligible to vote under IC 3-7-13-1;
- (2) submitted a voter registration application during the

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1 registration period described by IC 3-7-13-10 (or IC 3-7-36-11, if
2 the voter registered under that section); and

3 (3) executes an affidavit described in IC 3-10-1-9 or IC 3-11-8-23.

4 (d) A precinct election officer shall inform an individual described
5 by subsection (a)(3) that the individual may cast a provisional ballot.

6 SECTION 18. IC 3-11.7-5-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as
8 provided in section 5 of this chapter, if the county election board
9 determines that all the following apply, a provisional ballot is valid and
10 shall be counted under this chapter:

11 (1) The affidavit executed by the provisional voter under
12 IC 3-11.7-2-1 is properly executed.

13 (2) The provisional voter is a qualified voter of the precinct.

14 (3) Based on all the information available to the county election
15 board, including:

16 (A) information provided by the provisional voter;

17 (B) information contained in the county's voter registration
18 records; and

19 (C) information contained in the statewide voter registration
20 file;

21 the provisional voter registered to vote at a registration agency
22 under this article on a date within the registration period.

23 (b) If the provisional voter has provided information regarding the
24 registration agency where the provisional voter registered to vote, the
25 board shall promptly make an inquiry to the agency regarding the
26 alleged registration. The agency shall respond to the board not later
27 than noon of the first Friday after the election, indicating whether the
28 agency's records contain any information regarding the registration. If
29 the agency does not respond to the board's inquiry, or if the agency
30 responds that the agency has no record of the alleged registration, the
31 board shall reject the provisional ballot. The board shall endorse the
32 ballot with the word "Rejected" and document on the ballot the inquiry
33 and response, if any, by the agency.

34 (c) ~~This subsection applies after December 31, 2003.~~ Except as
35 provided in section 5 of this chapter, a provisional ballot cast by a voter
36 described in IC 3-11.7-2-1(b) is valid and shall be counted if the county
37 election board determines under this article that the voter filed the
38 documentation required under IC 3-7-33-4.5 and 42 U.S.C. 15483 with
39 the county voter registration office not later than the closing of the polls
40 on election day.

41 SECTION 19. IC 3-12-11-9 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Upon the filing

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of a petition for a recount or contest with the election division, the secretary of state shall issue a notice of the filing and pendency of the petition to each opposing candidate and deliver the notice to the state police department.

(b) This subsection applies if an attorney has filed an appearance with the election division as the representative of a candidate. The state police shall serve the notice on the attorney for the candidate.

(c) If subsection (b) does not apply, the state police department shall immediately serve the notice upon each opposing candidate in person or by leaving a copy at the last and usual place of residence.

(d) The state police department shall make immediate return of the service under this section.

SECTION 20. IC 3-12-11-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) This section applies if a cross-petition is filed under this chapter.

(b) This subsection applies only to a recount of an election for nomination or election to either of the following:

(1) A legislative office in which, on the face of the election returns, the difference between the number of votes cast for the cross-petitioner and the petitioner with the greatest number of votes is not more than one percent (1%) **of the total votes cast for all candidates for the nomination or office.**

(2) An office other than a legislative office in which, on the face of the election returns, the difference between the number of votes cast for the cross-petitioner and the petitioner with the greatest number of votes is not more than one percent (1%) **of the total votes cast for all candidates for the nomination or office.**

The cross-petitioner shall furnish a cash deposit equal to ten dollars (\$10) multiplied by the number of precincts that the cross-petitioner seeks to have recounted. The cash deposit shall be deposited in the state recount fund.

(c) This subsection applies only to a recount of an election for nomination or election to either of the following:

(1) A legislative office in which, on the face of the election returns, the difference between the number of votes cast for the cross-petitioner and the petitioner with the greatest number of votes is more than one percent (1%) **of the total votes cast for all candidates for the nomination or office.**

(2) An office other than a legislative office in which, on the face of the election returns, the difference between the number of votes cast for the cross-petitioner and the petitioner with the greatest

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number of votes is more than one percent (1%) **of the total votes cast for all candidates for the nomination or office.**

The cross-petitioner shall furnish a cash deposit equal to ten dollars (\$10) multiplied by the number of precincts that the cross-petitioner seeks to have recounted for the first ten (10) precincts recounted. For each precinct in excess of ten (10) the cross-petitioner seeks to have recounted, the cross-petitioner shall furnish an additional cash deposit equal to one hundred dollars (\$100) multiplied by the number of precincts in excess of ten (10) that the cross-petitioner seeks to have recounted. The cash deposit shall be deposited in the state recount fund.

(d) If after a recount, it is determined that the cross-petitioner has been nominated or elected, the deposit furnished by the cross-petitioner shall be returned to the cross-petitioner in full.

(e) Any unexpended balance remaining in a deposit after payment of the costs of the recount shall be deposited in the state recount fund.

SECTION 21. IC 3-12-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Except as provided in subsection (d) **or (e)**, the state recount commission shall grant the petitions and cross-petitions that have been filed and order the recount of the votes in the precincts upon:

- (1) the filing of a petition and cash deposit or bond under this chapter;
- (2) the expiration of the period under section 4 of this chapter for filing a cross-petition; and
- (3) proof of service of all notices.

(b) Except as provided in subsection (d), whenever a petition filed under section 2 of this chapter requests a recount in all precincts in the election district, the state recount commission may order a recount in the precincts upon:

- (1) the filing of a cash deposit or bond under this chapter; and
- (2) proof of service of all notices.

(c) Except as provided in subsection (d), the state recount commission shall grant a petition for a contest that has been filed and order a contest proceeding upon:

- (1) the filing of a petition under this chapter; and
- (2) proof of service of all notices.

(d) Whenever a motion to dismiss a petition or cross-petition for a recount or a petition for a contest is filed with the state recount commission or is made by a member of the commission, the commission shall rule on the motion to dismiss before ordering or continuing with a recount or a contest. The motion to dismiss must:

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(1) state that the petitioner or cross-petitioner has failed to comply with this chapter; and

(2) specifically identify the requirement that the petitioner or cross-petitioner has failed to comply with.

(e) Whenever the candidate receiving the highest number of votes and the candidate receiving the second highest number of votes cast for a nomination or an office file a joint motion to dismiss a recount or contest, the commission shall rule on the motion to dismiss before ordering or continuing with a recount or contest.

SECTION 22. IC 3-12-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. If there is a consolidation of petitions and cross-petitions, the state recount commission shall by consolidated order grant the consolidated petitions and cross-petitions and order a consolidated recount of all votes in each precinct in the ~~county~~ **election district for the office** requested in the petitions and cross-petitions.

SECTION 23. IC 3-12-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. The state recount commission shall conduct a recount in each precinct designated in a petition or cross-petition granted under this chapter **that is in the election district for the office**. The commission may conduct a recount in any precinct that cast votes for an office that is the subject of a recount under this chapter **if the precinct is within the election district for the office**.

SECTION 24. IC 3-12-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Except as provided in subsection (b), the state recount commission may by order impound and provide for the protection of ~~the following~~:

~~(1) All ballots, voting machines, and electronic voting systems used at the election for casting votes in the precincts;~~

~~(2) All tally sheets relating to the votes cast for the office;~~

~~(3) All poll lists of persons registered by the poll clerks as having voted for the office;~~

any election records or equipment described by IC 3-12-10-5(a).

(b) In a recount of an election for a legislative office, the state recount commission shall by order impound and provide for the protection of the following:

(1) All ballots, voting machines, and electronic voting systems used at the election for casting votes in all of the precincts within the legislative district.

(2) All tally sheets relating to the votes cast for the office.

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(3) All poll lists of persons registered by the poll clerks as having voted for the office.

SECTION 25. IC 3-12-11-17.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17.7. **(a) This section applies to ballots cast by any voting method.**

~~(a)~~ **(b)** Unless the state recount commission makes a finding under ~~subsection (b)~~, **subsection (c)**, the commission shall:

(1) count ballots in accordance with this article; and

(2) not order that all ballots in a precinct not be counted.

~~(b)~~ **(c)** If:

(1) a party to the recount presents evidence of fraud, tampering, or misconduct affecting the integrity of the ballot within a precinct; and

(2) the commission determines that the fraud, tampering, or misconduct within that precinct was so pervasive that it is impossible for the commission to determine the approximate number of votes that each candidate received in that precinct;

the commission may order that none of the ballots from that precinct be counted.

SECTION 26. IC 5-4-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a)** Members of the general assembly shall take ~~such~~ the oath **described by section 1 of this chapter** before taking their seats. ~~which~~ **The oath** shall be entered on the journals. ~~and~~

(b) The governor and lieutenant-governor shall each take ~~such the~~ oath ~~in presence of both houses of the general assembly in convention, and described by section 1 of this chapter.~~ The ~~same~~ oath shall be entered on the journals ~~thereof: of each chamber of the general assembly.~~

SECTION 27. IC 3-6-4.5-1 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 28. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 480, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 480 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

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